

Construction contractors incur Use Tax liability on the cost price of the tangible personal property permanently affixed or estate. See 86 Ill. Adm. Code 130.1940. (This is a GIL.)

September 9, 2004

Dear Xxxxx:

This letter is in response to your letter dated August 2, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Would you please provide general information guidance or a ruling with respect to the issue of whether a seller of venetian blinds is a 'construction contractor' within the meaning of Section 130.1940 and whether sales tax is payable on the sales of installed venetian blinds.

1. Facts. ABC does business in CITY through stores and an in-home service. They sell, among other similar items, venetian blinds that are made to measure. If venetian blinds are purchased from ABC, the sales agreement lists a charge for the blinds and, if installation is being provided (as it typically is), a charge for installation. ABC maintains that it is charging sales tax because it is uncertain whether ABC qualifies as a 'construction contractor' or whether their sales agreements qualify as 'construction contracts.' In this particular case, the contract is for the sale and installation of venetian blinds in an apartment in CITY between ABC and PERSON. A copy of the contract is attached.
2. Applicable Law. Section 130.1940(c) states that no Retail Occupation Tax ('ROT') is payable by construction contractors on venetian blinds where the tangible personal property is incorporated into a structure as part of a construction contract that includes installation.

Section 130.1940(c)(1) includes in the definition of a construction contractor a 'specialized contractor' and defines a 'contractor' as any person engaged in the occupation of entering into and performing construction contracts for owners.

Section 130.1940(a)(6) defines a 'construction contract' as 'a contract...to otherwise incorporate tangible personal property into real estate.'

3. Legal Conclusion. When ABC enters into a sales agreement to sell and install venetian blinds that are being affixed to real estate (i.e., windows in an otherwise finished house or apartment), it is acting as a construction contractor. This is because ABC is in the business of entering into and performing contracts to incorporate venetian blinds into homes within the meaning of Section 130.1940(a). Because no ROT applies to a construction contract for venetian blinds when the contractor is also providing installation pursuant to Section 130.1940(c)(1), ABC should not be charging 'sales tax' on such sales of venetian blinds.
4. Contrary Authorities. There are, to the best of my knowledge and PERSON's knowledge, no authorities indicating that ABC is not a construction contractor and no authorities indicating that sales tax is payable under these facts and circumstances. General information letter ST 98-0187-GIL dated June 17, 1998 provides helpful support for the legal conclusion requested herein.
5. No Other Rulings. To the best of my knowledge, and the taxpayer's knowledge, the Department of Revenue has not issued a private letter ruling to the taxpayer on this issue or a similar issue.

I would appreciate it if you would advise on whether the conclusion set forth above is correct. Please contact me if you have any questions or require any further information.

DEPARTMENT'S RESPONSE:

We are unable to issue your client ("PERSON") a private letter ruling binding the Department with respect to "ABC" based on your representation of PERSON. The retailer would need to submit a formal request in order to obtain a private letter ruling regarding its status as a "construction contractor." Therefore, I hope the following information will help you in making a tax liability determination.

The provisions of general information letter ST 98-0187-GIL, regarding the sale of tangible personal property permanently affixed or incorporated into realty, still apply. Please refer to 86 Ill. Adm. Code 130.1940(c)(1).

Generally, if a contractor permanently affixes or incorporates tangible personal property into realty, the purchaser incurs no tax. However, the retailer, acting as a construction contractor by permanently installing the tangible personal property, is required to report and remit Use Tax on the cost price of the tangible personal property installed.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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